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DR VIJAYA KUMAR VASUDEAVAN & ORS

v.

MAJLIS PERUBATAN MALAYSIA & ORS

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HIGH COURT MALAYA, KUALA LUMPUR
HISHAMUDIN MOHD YUNUS J
[CIVIL SUIT NO: S3-21-99-2004]
31 JANUARY 2008

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CIVIL PROCEDURE: *Striking out - Scandalous, frivolous, vexatious and abuse of process of court - Application for declaratory reliefs that applicants be allowed to practise as doctors - Allegations that applicants discriminated when sitting for qualifying examinations - Allegations too general in nature and rather far-fetched - Allegations lacked detailed particulars and were unsubstantiated - Rebutting evidence provided by defence in its affidavit - Striking out allowed*

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ADMINISTRATIVE LAW: *Exercise of administrative powers - Discretion - Power conferred on a Minister - Power to register medical graduates from unrecognized universities conferred on Minister of Health - Cabinet cannot exercise this power - Minister of Health cannot surrender this power to Cabinet - Minister must exercise his own discretion - Minister to act in consultation with Malaysian Medical Council*

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PROFESSIONS: *Medical practitioners - Qualification - Medical graduates from unrecognized universities - Matter as to whether or not to recognise a university is determined by Medical Act 1972 - Power to register medical graduates from unrecognized universities conferred on the Minister of Health*

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The plaintiffs were holders of medical degrees from universities other than the institutions specified in the Second Schedule to the Medical Act 1971 ('unrecognised universities'). In order to be entitled to be provisionally registered as medical practitioners in Malaysia, the plaintiffs applied to the 1st defendant to register for the examination under the Medical (Setting of Examination for Provisional Registration) Regulations 1993. The 1st defendant processed their applications and the plaintiffs were allocated places in the universities of the 3rd, 4th and 5th defendants by way of balloting to undertake the said examination. The plaintiffs then underwent a six month attachment course in 2003 at the respective universities which culminated in examination. The plaintiffs failed the examination and were therefore not entitled to be provisionally registered as medical practitioners. The plaintiffs alleged that: (i) the 2nd defendant, the Minister of Health was discriminatory and arbitrary in failing to accord recognition to the universities the plaintiffs attended; and (ii) the 2nd defendant failed to implement a Cabinet directive dated

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6 February 2002 directing him to exercise his powers under s. 14(3) of the Medical Act 1971 to allow medical graduates with degrees from unrecognized universities, including the plaintiffs, to practise as doctors in the Government service. The plaintiffs thus prayed for declaratory reliefs to the effect that they be allowed to practise as doctors in accordance with art. 8 of the Federal Constitution. The Minister denied that there was such a Cabinet directive. The learned Senior Assistant Registrar allowed the 1st, 2nd and 5th defendants' application to strike out the plaintiffs' statement of claim on the grounds that the suit was scandalous, frivolous and vexatious and an abuse of the process of court. Hence these appeals.

Held (dismissing the appeals with costs):

(1) The suit was scandalous, frivolous and vexatious as well as an abuse of the process of court. (para 4)

(2) It was highly improbable that there was such a Cabinet directive. Under s. 14(3), the power to register medical graduates from unrecognized universities (without requiring them to undergo the examination prescribed by s. 12(1)(aa) of the Medical Act 1971) is conferred on the Minister of Health and not on the Cabinet. The Cabinet cannot exercise this power; nor can the Minister of Health surrender this power to the Cabinet. The Minister must exercise his own discretion. Even then, the Minister cannot act alone. He acts in consultation with the Malaysian Medical Council. (paras 11 & 12)

(3) With regard to the contention of the plaintiffs that the 2nd defendant had discriminated against the universities from which they had graduated by not recognizing the universities, there was a misconception. It is not the function of the 2nd defendant to recognise or not to recognise a university. On the matter as to whether or not to recognise a university, this is determined by the Medical Act 1972. (para 15)

(4) In relation to the plaintiffs' allegations that when sitting for the examination, they were discriminated by the 5th defendant (Universiti Sains Malaysia), these allegations were too general in nature and rather far-fetched. The plaintiffs' allegations lacked detailed particulars and were unsubstantiated. The 5th defendant, on the other hand, in its affidavit produced documentary evidence that rebutted the allegations. (para 17)

Legislation referred to:
Federal Constitution, arts. 8, 43
Medical Act 1971, ss. 12(1)(a)(ii), (aa), (2), 14(3)
Rules of the High Court 1980, O. 18 r. 19(1)

For the plaintiffs - Muhammad Faiz Fadzil; M/s Aris Rizal Christopher Fernando & Co
For the 1st defendant - V Premshangar; M/s Lewis & Co
For the 5th defendant - Adam Abdullah (S Maniarasan with him); M/s Adam Abdullah & Mani

Reported by Amutha Suppayah

JUDGMENT

Hishamudin Mohd Yunus J:

[1] Encls. 61, 65 and 84 are the plaintiffs' appeals against the decision of the learned Senior Assistant Registrar in allowing the 1st (Malaysian Medical Council), 2nd (Minister of Health) and 5th (Universiti Sains Malaysia) defendants' application under O. 18 r. 19(1) of the Rules of the High Court 1980 to strike out the plaintiff's statement of claim on the grounds that the plaintiff's suit against the 3rd defendant is scandalous, frivolous and vexatious and an abuse of the process of court.

[2] I had, on 13 March 2007, on the oral application of the learned Senior Federal Counsel (Puan Narkunavathy Sundaresan), appearing for the 2nd defendant, which was supported by the learned counsel (Encik V. Premshangar) for the 1st defendant and the learned counsel (Encik Adam Abdullah) for the 5th defendant, and after hearing the objection by the learned counsel (Encik Muhammad Faiz Fadzil) for the plaintiffs, ordered that the three appeals of the plaintiffs be heard together.

[3] After considering the affidavits as well as the written submissions of all parties concerned, I have dismissed the appeals with costs; and I now give the grounds for my decision.

[4] I am satisfied the suit is scandalous, frivolous and vexatious as well as an abuse of the process of court. In fact earlier, on 25 January 2006, I had struck out the plaintiffs' statement of claim against the 3rd defendant (University of Malaya) on the ground that the claim was scandalous, frivolous and vexatious and an abuse of the process of court.

[5] The plaintiffs are holders of medical degrees from universities other than the institutions specified in the second schedule to the Medical Act 1971 ('unrecognised universities'). In order to be entitled to be provisionally registered as medical practitioners in Malaysia, the plaintiffs applied to the 1st defendant to register for the examination under the Medical (Setting of Examination for Provisional Registration) Regulations 1993. The 1st defendant processed their applications and the plaintiffs were allocated places in the universities of the 3rd, 4th and 5th defendants by way of balloting to undertake the said examination.

[6] The plaintiffs then underwent a six month attachment course in 2003 at the respective universities which culminated in examination. The plaintiffs failed the examination and were therefore not entitled to be provisionally registered as medical practitioners.

[7] The plaintiffs allege:

(a) that the 2nd defendant was discriminatory and arbitrary in failing to accord recognition to the universities the plaintiffs attended; and

(b) that the 2nd defendant failed to implement a cabinet decision dated 6 February 2002 directing him to exercise his powers under s. 14(3) of the Medical Act 1971 to allow medical graduates with degrees from unrecognized universities, including the plaintiffs, to practise as doctors in the Government service.

[8] The plaintiffs prayed for the following reliefs:

(a) a declaration that the plaintiffs have the right to be allowed to practise as doctors in accordance with art. 8 of the Federal Constitution;

(b) a declaration that the 2nd defendant ought to exercise his powers under s. 14(3) of the Medical Act 1971 as authorized and directed by the cabinet.

(c) a declaration that the plaintiffs have the right to practise as doctors after having completed the six month attachment;

(d) a declaration that the plaintiffs have the right to be provisionally registered under s. 12(1)(a)(ii) of the Medical Act after having done their six months attachment; and

(e) Damages.

[9] Central to the plaintiffs' case is an alleged cabinet directive of 6 February 2002. References to this alleged cabinet directive can be found at paras. 13.1, 13.2, 13.3, 13.4 and 13.5 of the statement of claim. For convenience I shall set out these paragraphs:

> 13.1 Defendan Kedua telah mengumumkan (seperti yang dilapurkan dalam The Star bertarikh 8.2.2003) bahawa Kabinet telah memutuskan pada 6.2.2002 bahawa dianggarkan sebanyak 200 siswazah perubatan yang memperolehi ijazah tidak diiktiraf kini dibenarkan untuk mengamal sebagai doctor kerajaan untuk mengatasi masalah kekurangan 3,500 doktor di Negara ini. Defendan Kedua dibenarkan untuk menggunakan kuasanya di bawah seksyen 14(3) Akta Perubatan 1971 untuk melaksanakan keputusan tersebut di atas.
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> Under Clause 14(3) the Health Minister upon consultation with the Malaysian Medical Council, is empowered to allow these medical graduates to undergo three years of training and three years of compulsory service with the government.
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> They are now required to submit their applications to the Health Minister. It (applications) will subsequently be forwarded to the MMC for consultation before processing by the Health Director-General for placements in government medical facilities. Those found eligible under section 14(3) could start practicing now without having to sit for their final year examination in the three Universities.
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> 13.2 The New Straits Times telah melaporkan pada 8/2/2002 di bawah tajuk: 'Doctors from unaccredited varsities to get a chance.'
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> The Cabinet will allow the Health Ministry to employ Malaysians from unaccredited foreign medical Universities to help resolve the perennial shortage of doctors.
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> Applicants only have to undergo a year's housemanship and two years supervision under a specialist or the Director-General of health.
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> Health Minister Datuk Chua Jui Meng said they could be required to sign a compulsory three-year bond with the government. All they have to do is to write to me (to be accepted as doctors).
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> 13.3 The Sun bertarikh 17/2/2003 melaporkan Bernama yang memetik kenyataan Menteri Kesihatan Datuk Chua Jui Meng di bawah tajuk:

Move On Docs Won't Effect Service Quality

Previously medical graduates from unaccredited universities had to sit for a qualifying examination in local universities to be eligible to join the government service.

With the Cabinet approval, the doctors can now decide whether to sit for the examination or not.

If they pass the examination, they only need to do housemanship for a year followed by three years' compulsory service with the government. Those who choose to forgo the examination need to undergo the one-year housemanship followed by two years' supervision under a senior doctor and specialist and three years' of mandatory service with the government.

13.4 Berikutan dengan keputusan tersebut di atas, Kabinet telah memberi kuasa dan mengarahkan Menteri Kesihatan di bawah Artikel 43 Perlembagaan Persekutuan untuk menggunakan kuasanya di bawah seksyen 14(3) Akta tersebut untuk melaksanakan keputusan kerajaan untuk menggaji 200 orang doctor termasuk Plaintif-Plaintif.

13.5 Kabinet mempunyai kausa untuk menentukan polisi kerajaan untuk kepentingan awam dan untuk menggunakan kausa eksekutifnya melalui Defendan Kedua. Amatlah jelas bahawa Defendan Kedua gagal untuk mengimplementasikan keputusan kerajaan tersebut, dengan itu menyebabkan Plaintif dinafikan hak-hak, kelayakan dan kehilangan mata pencarian.

[10] The above averments allege that there were reports in The Star, the New Straits Times and the Sun stating that the Health Minister had been directed by the cabinet to exercise his powers under s. 14(3) of the Medical Act 1971 to employ two hundred medical graduates from unrecognized universities as doctors. The Minister in his affidavit has denied that there was such a cabinet directive. When there is this denial by the Minister it is incumbent upon the plaintiffs to substantiate their claim. It is not sufficient for the plaintiffs to rely merely on newspaper reports. But the plaintiffs have failed to substantiate their allegation.

[11] In my judgment it is highly improbable that there was such a cabinet directive. Under sub-s. (3) of s. 14, the power to register medical graduates from unrecognized universities (without requiring them to undergo the examination prescribed by s. 12(1)(aa) of the Medical Act 1971) is conferred on the Minister of Health and not on the cabinet. The provision is very clear on this. The provision reads:

(3) Notwithstanding anything to the contrary contained in this Act, any person may be fully registered under this section subject to such restrictions and conditions as may be stipulated by the

A Minister, provided that the person seeking registration under this subsection possesses a qualification with respect to which the Minister, after consulting the Council, is satisfied that it is adequate.

[12] The cabinet cannot exercise this power; nor can the Minister of B Health surrender this power to the cabinet. The Minister must exercise his own discretion. Even then, the Minister cannot act alone. He acts in consultation with the Malaysian Medical Council. For the subsection says:

C … after consulting the council …

[13] True, the Minister is not bound by the views of the council. But nonetheless he must seek its view and must respect and give due consideration to the council's view. Consulting the council is not a mere formality. The cabinet has no place in the scheme of sub-s. (3) of D s. 14. To say that the cabinet can direct the Minister as to how he should his powers under sub-s. (3) of s. 14 is to labour under a serious misconception. But the learned counsel for the plaintiffs in his argument (that the Minister must implement the directive of the cabinet) has referred to art. 43 of the Federal Constitution. I have examined this E article. With respect, I find this article irrelevant.

[14] Further, do note the words:

… provided that the person seeking registration under this subsection …

F in sub-s. (3). This means that before the Minister can exercise his power of exemption under s. 14(3), there must be a person interested in seeking registration and has submitted his application to the Minister. The Minister cannot on his own volition register a person if that person does not apply to register. In this regard, I have examined the statement of claim, but I find that there is nothing in the statement of claim G stating that the plaintiffs (or any of those 24 persons listed in Annexure 'A') have made an application seeking registration under sub-s. (3) of s. 14.

[15] With regard to the contention of the plaintiffs that the 2nd H defendant had discriminated against the universities from which they had graduated by not recognizing the universities, there is a misconception here. It is not the function of the 2nd defendant to recognise or not to recognise a university. On the matter as to whether or not to recognise a university, this is determined by an Act of Parliament – the Medical I Act 1972. Section 12 of the Act states:

Persons entitled to provisional registration.

12. (1) Subject to this Act and the regulations thereunder, a person shall be entitled to be provisionally registered as a medical practitioner, solely for the purpose of obtaining the experience specified in section 13, upon application to the Registrar in the prescribed form if:

(a) he holds:

(i) any of the qualifications specified in the third column of the Second Schedule granted by an institution specified in relation to that qualification in the second column of that Schedule; or

(ii) a qualification in medicine and surgery other than the qualifications referred to in subparagraph (i), deemed suitable for registration by the Minister after consulting the Council;

(aa) in the case of a person who holds a qualification referred to in subparagraph (a)(ii), he has passed such examination as may be prescribed or set for the purpose of this paragraph by a body approved by the Minister; and

(b) he produces to the Registrar evidence to the satisfaction of the Registrar that, subject to his being provisionally registered, he has been selected:

(i) for employment under subsection 13(2) or that he is eligible to be exempted therefrom under subsection 13(6).

(ii) [deleted]

(2) The Minister may from time to time, after consulting the Council, add to, delete from or amend the Second Schedule by order published in the Gazette.

[16] The universities or institutions that are recognized are those that are listed in the second schedule. It is true that by virtue of sub-s. (2) of s. 12 above the Minister has the power (to be exercised by an order) to add to the Second Schedule universities which hitherto are not recognised. But before the Minister can exercise his powers (after consulting the council) under the above sub-s. (2) of s. 12, there must first be an application made to the Minister by the university that desires to be recognised. However, there is no affidavit evidence adduced by the plaintiffs that there had been applications made by the universities from which they had graduated for recognition.

[17] In relation to the 5th defendant, the learned counsel for the plaintiffs submits that the plaintiffs and the 24 persons named in Annexure A, when sitting for the examination, were discriminated by the

A 5th defendant (as well as by the 3rd and 4th defendants, with whom we are not concern in these appeals). I find that the allegations (which are denied by the 5th defendant) such as:

(a) that the 5th defendant deliberately passed its own local students and deliberately failed the plaintiffs;

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(b) that during the examination the 5th defendant allowed its own local students to answer the examination questions either in Bahasa Malaysia or in the English language, but did not allow the plaintiffs to write their answers in Bahasa Malaysia; and

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(c) that for the purpose of the examination the plaintiffs were given examination registration numbers which were different from those given to local students, so that the examiners would be able to identify the plaintiffs' answer scripts;

D are too general in nature and rather far-fetched. Hence I find it difficult to believe the allegations. Whilst the plaintiffs' allegations lack detail particulars and are unsubstantiated, the 5th defendant, on the other hand, in its affidavit has produced documentary evidence that rebuts the allegations, and which satisfies me that the plaintiffs' allegations are E scandalous, frivolous and vexatious.

[18] In relation to the 1st defendant the statement of claim is not clear as to the nature of plaintiffs' cause of action against the council.

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